

RECEIVED
5-28-13
cc: FS

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

MARK SOLOMON,)	Case No. 1305-06926
)	
Plaintiff,)	FIRST AMENDED COMPLAINT
)	
v.)	(Breach of Insurance
)	Contract)
EAGLE WEST INSURANCE)	
COMPANY,)	(Not Subject to Mandatory
)	Arbitration)
Defendant.)	JURY TRIAL REQUESTED

CLAIM FOR RELIEF
(Breach of Insurance Contract)

COUNT 1
(Express Contract)

1.

Plaintiff Mark Solomon ("plaintiff") is, and at all times mentioned herein was, the owner of property located at 10611 SE Prairie Schooner Road, Prineville, Oregon (the "property").

2.

Defendant Eagle West Insurance Company ("defendant") is, and at all times mentioned herein was, a corporation.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

3.

Defendant issued a homeowners policy (the "policy") to plaintiff. The policy was issued for valuable consideration in the form of policy premiums, which were paid by plaintiff.

4.

Pursuant to the policy, defendant insured the property and agreed to pay for certain losses, including, but not limited to theft losses of personal property.

5.

While the policy was in force, on or about May 18, 2011 burglars entered plaintiff's dwelling, and stole personal property.

6.

The losses suffered by plaintiff fall within the coverage of defendant's policy. Pursuant to the terms of the policy, plaintiff sought payment from defendant for all his damages. Defendant has refused to pay plaintiff's loss of personal property.

7.

Defendant's denial and refusal to pay plaintiff's damages constitutes a breach of the insurance contract.

8.

As a result of defendant's breach of contract, plaintiff has been damaged in the amount of \$120,000.

9.

Plaintiff is entitled to attorney fees under ORS 742.061.

///

///

COUNT 2
(Implied Covenant)

10.

Plaintiff realleges and incorporates by reference the allegations in paragraphs 1-9.

11.

Defendant failed to make payment, refused to make payment, and delayed payment for losses that were caused by the theft, in violation of the policy of insurance, thus causing damages to plaintiff.

12.

Defendant violated the implied covenant of good faith and fair dealing in failing properly to investigate the loss, adjust the claim, and pay plaintiff for all the losses sustained as a result of the entry and theft, causing damages to plaintiff:

a. On or about May 18, 2011 burglars entered plaintiff's dwelling and stole plaintiff's personal property.

b. Plaintiff promptly reported the losses, and provided proper proof of loss. More than six months have passed since plaintiff's submissions of proof of loss.

c. Defendant has repudiated the contract.

d. Plaintiff has supplied all information and documentation requested by defendant.

13.

It was foreseeable to defendant that if it breached its obligations under the insurance policy, plaintiff would suffer damages.

///

14.

As a result of the breach of contract by defendant, plaintiff has suffered damages as set forth in paragraph 8.

WHEREFORE, plaintiff prays for relief from defendant as follows:

(a) On the CLAIM FOR RELIEF: For damages in the amount of \$120,000, including plaintiff's attorney fees herein;

(b) For prejudgment interest at the legal rate from the time damages are incurred;

(c) For plaintiff's attorney fees, costs and disbursements herein; and

(d) For such other relief as the court deems just and proper.

Dated this 24th day of May, 2013.

SHENKER & BONAPARTE, LLP

By


Robert E.L. Bonaparte, OSB No. 883411
Of Attorneys for Plaintiff Mark Solomon

Trial Attorney:

Robert E.L. Bonaparte, OSB No. 883411

CERTIFICATE OF SERVICE

I certify that I served the foregoing **FIRST AMENDED COMPLAINT** on the following person on May 24, 2013, by e-mail and regular mail a true and correct copy thereof, addressed to said attorneys at the addresses shown below:

Matthew E. Hedberg, OSB No. 081958
E-Mail: matt.hedberg@bullivant.com
Bullivant Houser Bailey PC
888 SW 5th Ave Ste 300
Portland OR 97204
Telephone: 503 228-6351
Facsimile: 503 295-0915
Of Attorneys for Defendant

SHENKER & BONAPARTE, LLP

By /s/ Robert E.L. Bonaparte
Robert E.L. Bonaparte, OSB No. 883411
Telephone: (503) 242-0005
Facsimile: (503) 323-7360